

MEMO ENDORSED

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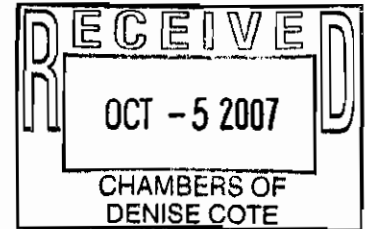
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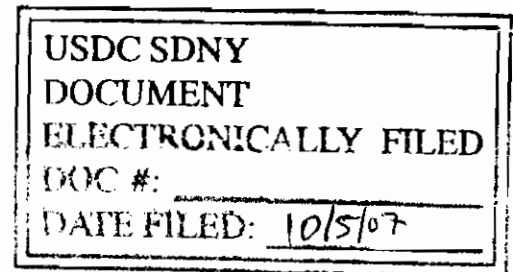
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October 4, 2007

By Hand

The Hon. Denise L. Cote
United States District Judge
United States District Court
for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1040
New York, NY 10007



Re: *Ritchie Capital Management, L.L.C. v. Coventry First LLC*,
No. 07 Civ. 3494 (DLC)

Dear Judge Cote:

This letter is in response to Defendants' October 1, 2007 letter requesting leave to file a sur-reply to Plaintiffs' Reply in support of their Motion for Reconsideration. Dkt. 62. This Court granted leave to Defendants to file a sur-reply by October 9, 2007. Dkt. 64. Plaintiffs request leave to file a response to Defendants' sur-reply. See *In re Worldcom, Inc. Sec. Litig.*, No. 02 Civ. 3146 (DLC), 2004 WL 540450, *6 n.3 (S.D.N.Y. March 19, 2004) (granting leave to file a response to a sur-reply). Leave should be granted for at least two reasons.

First and foremost, Defendants' request to file a sur-reply suggests that they were caught unawares by Plaintiffs' reliance on the Second Circuit's decision in *Merrill Lynch & Co. v. Allegheny Energy, Inc.*, No. 05-5129, 2007 WL 2458411 (2d Cir. Aug. 31, 2007). Defendants' request fails to mention that *Merrill Lynch* was issued on August 31, 2007, one week after Plaintiffs' Motion for Reconsideration was filed on August 24, 2007 and a full *three weeks before* Defendants filed their brief in Opposition on September 21, 2007. Accordingly, Defendants had ample opportunity to address the *Merrill Lynch* decision in their brief in Opposition.

Second, and again contrary to what Defendants state in their letter, Plaintiffs did *not* raise any arguments "for the first time" in their reply brief. In their Reply, Plaintiffs cited to *Merrill Lynch* in support of their argument that Plaintiffs' fraud and fraudulent inducement claims are not duplicative of their contract claim. See Dkt 62 (Plaintiffs' Reply in support of motion for reconsideration) at pp. 1-3. This precise argument was fully briefed by Plaintiffs in their

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brief in Opposition. See Dkt. 54 (Plaintiffs' Revised Memorandum of Law in support of motion for reconsideration) at pp. 2-8; Dkt. 56 (Defendants' Brief in Opposition) at pp. 10-15, 22-23; see also *Miller v. IBM World Trade Corp.*, No. 06 Civ. 4452 (DLC), 2007 WL 700902, *2 n.4 (S.D.N.Y. March 8, 2007) (denying request to file a sur-reply because the reply "raised no new arguments, and the requested sur-reply ... merely repeats the arguments already made in [the] opposition").

As Defendants have been granted leave to file a sur-reply addressing Plaintiffs' citation of the *Merrill Lynch* decision, Plaintiffs request that the Court grant corresponding leave to Plaintiffs to file a brief response to Defendants' sur-reply.

Respectfully submitted,



Thomas P. Puccio

cc: Dane H. Butswinkas
Robert M. Cary

Denise L. Cote
October 5, 2007